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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider  
Regulating Telecommunications Services  
Used by Incarcerated People.

Rulemaking 20-10-002

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This Scoping Memo and Ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1. and Article 7 of the California Public Utility Commission's (Commission) Rules of Practice and Procedure.

**1. Background**

The Commission adopted an Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People on October 8, 2020. The purpose of this rulemaking is to ensure that incarcerated people in California pay just and reasonable rates for intrastate calling services, under just and reasonable terms and conditions.

This rulemaking builds on work by the Federal Communications Commission (FCC) to regulate interstate inmate communication services.<sup>1</sup> In 2012, the FCC opened a rulemaking *In the Matter of Rates for Interstate Inmate*

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<sup>1</sup> The Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No, 12-375 (rel. Aug. 7, 2020), at page 10, states that interstate calls constitute roughly 20 percent of all inmate calls.

*Calling Services*, WC Docket No. 12-375. The FCC did so to address concerns regarding a lack of competition in the inmate communication services market, resulting in long-term contracts, and “locational monopolies” with a “captive consumer base of inmates.”<sup>2</sup> The 2012 FCC rulemaking resulted in several orders placing limits on the rates charged to inmates.<sup>3</sup>

In 2015, the FCC approved its *Second Report and Order and Third Further Notice of Proposed Rulemaking* (FCC Order), which stated that “there is little dispute that the [Inmate Calling Services] market is a prime example of market failure.”<sup>4</sup> Amongst other things, the 2015 FCC Order imposed or updated fee caps on both interstate and intrastate inmate communication rates and ancillary fees.<sup>5</sup>

In 2017, the U.S. Court of Appeals for the D.C. Circuit (Court) struck down the portion of the 2015 FCC Order that attempted to impose intrastate rate caps as beyond the FCC’s statutory authority.<sup>6</sup> The Court also vacated the FCC’s 2015

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<sup>2</sup> Prison Policy Institute, Comments on Order Instituting Rulemaking, citing First Report & Order ¶¶ 39-41, 28 FCC Rcd. at 14128-30; *Global Tel\*Link v. FCC*, 866 F.3d at 404 (“Once a long-term, exclusive contract bid is awarded to an [Inmate Calling Service] ICS provider, competition ceases for the duration of the contract and subsequent contract renewals. Winning ICS providers thus operate locational monopolies with a captive consumer base of inmates and the need to pay high site commissions.”); and, *Id.* at 111, 28 FCC Rcd. at 14217 (Ajit Pai, dissenting) (“[W]e cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable.”).

<sup>3</sup> The rate caps ordered by the Federal Communications Commission are summarized in a Federal Communications Commission Consumer Guide “Inmate Telephone Service,” accessed January 5, 2021, and available at [https://www.fcc.gov/sites/default/files/inmate\\_telephone\\_service.pdf](https://www.fcc.gov/sites/default/files/inmate_telephone_service.pdf).

<sup>4</sup> See Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, (“FCC Order”), 30 FCC Rcd. 12763, ¶¶ 3 (Nov. 5, 2015).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Global Tel\*Link*, 866 F.3d at 412.

rate caps.<sup>7</sup> In mid- 2020, the FCC requested that the National Association of Regulatory Utility Commissioners (NARUC) and state regulatory commissions take action on intrastate inmate communication services rates to enable more affordable communications for the incarcerated and their families.<sup>8</sup> Shortly thereafter, NARUC asked state utility commissions to review the rates and terms under which telecommunications services are provided to incarcerated people “and act, where appropriate.”<sup>9</sup>

On August 8, 2020, the FCC released its Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking (Fourth Rulemaking) in its *Rates for Interstate Inmate Calling Services* docket. Among other things, the FCC again proposed to update its rate caps on interstate calls. The FCC concurrently urged states to take action to address high intrastate inmate communication services rates.<sup>10</sup>

Senate Bill (SB) 555, introduced February 22, 2019 by Senator Holly Mitchell, aimed to reduce additional charges added by counties to the sale of confectionary, toilet articles, tobacco, postage and writing materials to incarcerated people in county jails, which are deposited into an inmate welfare fund, and would have capped inmate communications rates and fees. For

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<sup>7</sup> Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No, 12-375 (rel. Aug. 7, 2020), at 2.

<sup>8</sup> Letter from Ajit Pai to Brandon Presley (July 20, 2020), available as of this writing at: <https://docs.fcc.gov/public/attachments/DOC-365619A1.pdf>.

<sup>9</sup> Nat’l Ass’n of Reg. Util. Comm’rs, *NARUC Urges Members to Review Inmate Calling Rates* (July 23, 2020), available as of this writing at <https://www.naruc.org/about-naruc/press-releases/naruc-urges-members-to-review-inmate-calling-rates/>.

<sup>10</sup> Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No, 12-375 (rel. Aug. 7, 2020), at ¶ 4.

inmate communications service contracts, SB 555 proposed to require counties to award contracts to providers offering the lowest cost to people confined in California county jails and juvenile facilities for quality services. SB 555 would have capped rates for telephone communication services for incarcerated people at five cents per minute and capped rates for video communications services at twenty-five cents per minute. The bill also prohibited various types of fees for communications services. The legislature adopted SB 555 in early September 2020, but Governor Newsom vetoed the bill later that month. The Governor's veto message said that he "strongly support[ed] the goals of the bill" but feared reductions to the inmate welfare fund would have the "unintended consequence of reducing important rehabilitative and educational programs for individuals in custody."<sup>11</sup>

Subsequent to Commission adoption of this Order Instituting Rulemaking on October 8, 2020, 16 parties filed opening comments on the Order Instituting Rulemaking on November 9, 2020 and six parties filed reply comments on the Order Instituting Rulemaking on November 19, 2020.<sup>12</sup> The assigned

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<sup>11</sup> Office of the Governor, SB 555 Veto Message, September 30, 2020, available as of this writing at: <https://www.gov.ca.gov/wp-content/uploads/2020/09/SB-555.pdf>.

<sup>12</sup> Parties filing opening comments on the Order Instituting Rulemaking include the intervenor organizations the Californians for Jail and Prison Phone Justice Coalition (composed of five organizations, the Ella Baker Center for Human Rights, Friends Committee on Legislation of California, the San Francisco Financial Justice Project, Worth Rises, and the Young Women's Freedom Center), the Center for Accessible Technologies, the Greenlining Institute, the Media Alliance, the Prison Policy Initiative, Inc., the Public Advocates Office, Root and Rebound, The Utility Reform Network (TURN), and the Youth Law Center. Communications services companies filing opening comments include Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), and Bright House Networks Information Services (California), LLC (Charter), Comcast Phone of California (Comcast), Cox California Telecom, LLC d/b/a Cox Communications, Global Tel\*Link Corporation, Inmate Calling Solutions, LLC d/b/a IC Solutions, Network Communications International Corp. d/b/a NCIC Inmate

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Administrative Law Judge held a prehearing conference on December 10, 2020 to discuss the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters.

## **2. Overview of Inmate Calling Services in California**

Inmate calling services in California are generally provided by private communications companies under contract with the entity that oversees or owns the facility.<sup>13</sup> While incarceration facilities may be owned or operated, either in whole part, by a private company, the facilities still are ultimately governed under contract with federal, state, county, or city government entities.<sup>14</sup>

The federal Bureau of Prisons operates 12 federal prisons or detention centers in California, including penitentiaries, correctional institutions, and residential reentry management offices.<sup>15</sup> An additional 10 to 12 federal immigrant detention facilities and military prisons are located in California.<sup>16</sup>

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Communications, and Securus Technologies, LLC (Securus). Parties filing reply comments on the Order Instituting Rulemaking include the Public Advocates Office, Medial Alliance, Prison Policy Institute, Inc., TURN, the Center for Accessible Technology, and AT&T Corporation (Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., Teleport Communications America, LLC, and SBC Long Distance, LCC, d/b/a AT&T Long Distance).

<sup>13</sup> Public Advocates Office, Comments on Order Instituting Rulemaking at 2.

<sup>14</sup> *Ibid.*

<sup>15</sup> Federal Bureau of Prisons locations, accessed December 28, 2020 at <https://www.bop.gov/locations/list.jsp#>.

<sup>16</sup> The California Department of Justice identified ten detention facilities housing immigrant detainees in California in early 2019, including four county-operated facilities, four privately-operated facilities, two inactive facilities, and three federal Immigration and Customs Enforcement (ICE) enforcement and removal operation field offices. See "The California Department of Justice's Review of Immigration Detention in California," February 19, 2019 at page 13, accessed December 28, 2020 at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>. The California Department of Justice identifies four county-operated facilities, including the James A. Musick Facility (Irvine), the Theo Lacy Facility (Orange), Yolo Juvenile Detention

*Footnote continued on next page.*

The State of California incarcerates individuals in state prisons, correctional facilities, vocational institutions, medical facilities, four juvenile facilities, and 43 “Conservation Camps.”<sup>17</sup> The California Department of Corrections and Rehabilitation oversees these state facilities and provides calling services to people who are incarcerated through a single statewide contract with the company Global Tel\*Link.<sup>18</sup>

The California counties operate an additional 110 – 116 county jails for adults, including court holding facilities, temporary holding facilities and long-

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Facility (Woodland), and the Yuba County Jail (Marysville). Privately-operated facilities include the Adelanto ICE Processing Center (Adelanto), the Imperial Regional Detention Facility (Calexico), the Mesa Verde ICE Processing Center (Bakersfield), and the Otay Mesa Detention Center (San Diego). ICE enforcement and removal operation field offices identified include San Diego-Imperial, Los Angeles and San Francisco offices. Inactive detention centers include the Rio Cosumnes Correctional Center (Elk Grove) and the West County Detention Facility (Richmond). As of late 2019, additional immigrant detention facilities in California appear to include the Desert View Correctional Facility in Adelanto, the Central Valley Modified Community Correctional Facility in McFarland, and the Golden State Modified Correctional Facility in McFarland (see “The GEO Group Signs Contracts with U.S. Immigration and Customs Enforcement for Five Facilities in California Totaling 4,490 Beds,” accessed December 28, 2020 at <https://www.businesswire.com/news/home/20191223005099/en/GEO-Group-Signs-Contracts-U.S.-Immigration-Customs>. See also U.S. Department of Homeland Security official website, which lists eight Immigration and Customs Enforcement detention centers in California: Adelanto ICE Processing Center, Santa Ana City Jail, Yuba County Jail, Mesa Verde ICE Processing Facility, James A. Musick Facility, Imperial Regional Detention Facility, Otay Mesa Detention Center and Golden State Annex. Accessed December 28, 2020 at <https://www.ice.gov/detention-facilities>.

<sup>17</sup> Public Advocates Office, comments on Order Instituting Rulemaking at 3, citing California Department of Corrections and Rehabilitation “Facility Locator,” (accessed October 22, 2020 and December 28, 2020). <https://www.cdcr.ca.gov/facility-locator/>. Conservation camps house incarcerated people who serve as a source of labor to support the state’s response to emergencies such as fires, floods, and other natural or manmade disasters.

<sup>18</sup> *Ibid.*

term jails.<sup>19</sup> California counties also manage some 70 juvenile detention centers and camps.<sup>20</sup> Some California cities also operate jails or holding facilities. 58 county sheriffs and probation chiefs negotiate their contracts independently with calling service provider companies.<sup>21</sup>

In 2018, the average cost of a 15-minute call from a California jail was reported as \$5.70 as compared to the 15-minute average cost from a California prison of \$2.03.<sup>22</sup> In 2020, the average cost of a 15-minute intrastate call from a California correctional facility was reported at \$4.77, which is still estimated to be 50 percent higher than the cost of an interstate call in 2020.<sup>23</sup> In six adult California jails, a 15-minute intrastate call in 2020 is reported to cost over 400 percent of a comparable interstate call.<sup>24</sup> Some county jails charge as much as \$13.65 for a 15-minute call in 2020.<sup>25</sup>

The cost of a 15-minute phone call with a young person incarcerated in a juvenile facility varies from county to county in California. In some counties, these calls are free, but a 15-minute call from a youth to their family is reported

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<sup>19</sup> Public Policy Institute of California, “California County Jails: Just the Facts,” October 2018, accessed December 28, 2020 at [https://www.ppic.org/wp-content/uploads/JTF\\_CountyJailsJTF.pdf](https://www.ppic.org/wp-content/uploads/JTF_CountyJailsJTF.pdf).

<sup>20</sup> Board of State and Community Corrections, data and research, accessed December 28, 2020 at [https://www.bscc.ca.gov/m\\_dataresearch/](https://www.bscc.ca.gov/m_dataresearch/).

<sup>21</sup> Root and Rebound, Comments on Order Instituting Rulemaking at 6.

<sup>22</sup> Public Policy Institute of California, “California County Jails: Just the Facts,” October 2018, accessed December 28, 2020.

<sup>23</sup> Prison Policy Initiative, Comments on Order Instituting Rulemaking at 5.

<sup>24</sup> *Ibid.*

<sup>25</sup> Root and Rebound, Comments on Order Instituting Rulemaking at 4, citing “Costs of Intrastate Phone Calls from California County Jails During Covid-19 Pandemic.”



to range from \$2.40 in Solano County, to \$6.00 in San Mateo County, and to \$13.65 in San Benito County.<sup>26</sup>

Global Tel\*Link states that security protocols account for some of the cost differences as compared to the cost of service for general public consumers.<sup>27</sup> Additionally, Global Tel\*Link reports that as of January 1, 2020, adult institutions included in its contract with the California Department of Corrections assess a per-minute rate of \$0.076 for local and intrastate collect calls and \$0.076 per-minute for local and intrastate prepaid collect and debit calls, and youth institutions charge a \$0.00 per-minute rate for local, intrastate, and interstate calls.<sup>28</sup>

Parties note that multiple communications services are usually provided by the same carrier under the terms of a single bundled contract. The Prison Policy Institute reports that as many as 82 percent of incarceration facilities in California that offer video calling services may do so through the same company that provides voice calling services.<sup>29</sup> Video calling rates are reportedly higher than voice calling rates in California.<sup>30</sup>

Nationally, as much as three quarters of individuals held in jails have not been either sentenced or convicted, with the vast majority of these being held

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<sup>26</sup> The Financial Justice Project, Young Women's Freedom Center and Children's Defense Fund-California, "Price of Justice: Juvenile Phone Calls," accessed August 24, 2020, available at <https://sfgov.org/financialjustice/>.

<sup>27</sup> Global Tel\*Link, Comments on Order Instituting Rulemaking at 8.

<sup>28</sup> *Id.* at 13.

<sup>29</sup> Prison Policy Institute, Comments on Order Instituting Rulemaking at 6.

<sup>30</sup> *Ibid.*



pre-trial.<sup>31</sup> Charging high calling rates for such persons drives up costs for their appointed public counsel and makes it harder for them to contact family members and others who might help them post bail or build their defense. High inmate communication service rates also negatively impact society by fostering recidivism, interfering with inmates' ability to consult their attorneys, and impeding family contact that can "make[] prisons and jails safer spaces."<sup>32</sup>

Research reported by Root and Rebound indicates that as many as one in three families with incarcerated family members go into debt due to the costs of phone calls and visits alone and that the cost of maintaining contact with incarcerated persons falls to families and disproportionately on low-income women of color.<sup>33</sup> In addition, restrictions allowing only collect calls, which are not accepted by most support providers, inhibit or prevent inmates from undertaking re-entry preparation activities, which then may also fall to their family members.<sup>34</sup>

Root and Rebound identifies a 2015 study that found the median annual income of incarcerated people prior to their incarceration is \$19,185, and even

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<sup>31</sup> Public Advocates Office, Comments on Order Instituting Rulemaking at 4, citing Sawyer, Wendy, and Peter Wagner. 2020. "Mass Incarceration: The Whole Pie 2020." Prison Policy Initiative. Available as of this writing at <https://www.prisonpolicy.org/reports/pie2020.html>.

<sup>32</sup> *Id.* at 405 (quoting the FCC's brief).

<sup>33</sup> Root and Rebound, Comments on Order Instituting Rulemaking at 3, citing, Saneta deVuomo-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. "Who Pays? The True Cost of Incarceration on Families." Ella Baker Center for Human Rights, Forward Together, and Research Action Design. September 2015, available at: <http://www.whopaysreport.org/who-pays-full-report/>.

<sup>34</sup> *Ibid.* Re-entry preparation activities may include seeking transitional housing, obtaining medical insurance or other public benefits, or setting up appointments with the Department of Motor Vehicles.

lower for Black and Latinx individuals.<sup>35</sup> TURN urges the Commission to consider the “inequities and discriminatory impacts the current business practices and unreasonable rates, terms and conditions” have on vulnerable populations in California, including minors, low-income families, communities of color, limited English speaking consumers and others.<sup>36</sup> Goal 6 of the Commission’s Environmental and Social Justice Action Plan aims to “enhance enforcement to ensure safety and consumer protection for all, especially for [Environmental Justice and Social Justice Communities], and Goal 3 would “improve access to high quality communications services” for such communities. Goal 6 includes the objective, “[p]rotect consumers in disadvantaged communities and vulnerable populations from fraud and unfair business practices” in regulated industries.<sup>37</sup>

In these circumstances, determining if incarcerated people and their families currently have access to communication services at just and reasonable rates could be aided by investigation of the affordability of the rates to these families. Decision (D.) 20-07-032 adopted metrics and methodologies for

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<sup>35</sup> *Id.* at 4.

<sup>36</sup> TURN, Comments on Order Instituting Rulemaking at 17, referring in part to the Commission’s Environmental and Social Justice Action Plan and Status Report (May 2020), available as of this writing at: <https://www.cpuc.ca.gov/ESJactionplan/>.

<sup>37</sup> Environmental and Social Justice Action Plan at 16-18. See also page 9, where the plan identifies Environmental Justice and Social Justice communities as those where residents are: predominantly communities of color or low-income; underrepresented in the policy setting or decision-making process; subject to a disproportionate impact from one or more environmental hazards; like to experience disparate implementation of environmental regulations and socio-economic investments in their communities; and including disadvantaged communities located in the top 25 percent of communities identified by Cal EPA’s CalEnviroScreen; all Tribal lands, low-income households with household income below 80 percent of area median income; and, low-income census tracts with household incomes less than 80 percent area or state median income.

assessing the relative affordability of utility service across industries regulated by the Commission. Amongst other activities, Phase II of this proceeding may seek to better understand what might constitute affordable inmate communication service rates for inmates and their families using the methodologies and tools adopted in D.20-07-032.

### **3. FCC Action to Cap Rates and Ancillary Fees**

In 2013, the FCC adopted interstate rate caps of \$0.21 per minute for debit and prepaid calls and \$0.25 per minute for collect calls.<sup>38</sup> In its *Second Report and Order and Third Further Notice of Proposed Rulemaking* the FCC adopted rate tiers based on the relative size of the incarceration facility using the Average Daily Population of the incarceration facility by creating the following tiers: 0-349, 350-999, and 1,000 and greater.<sup>39</sup>

- 11 cents/minute for debit/prepaid calls, in state or federal prisons.
- 14 cents/minute for debit/prepaid calls in jails with 1,000 or more inmates.
- 16 cents/minute for debit/prepaid calls in jails with 350-999 inmates.
- 22 cents/minute for debit/prepaid calls in jails of up to 349 inmates.
- Rates for collect calls are slightly higher in the first year and will be phased down to these caps after a two-year transition period.

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<sup>38</sup> Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, FCC, released August 7, 2020, at page 2; available as of this writing at: <https://docs.fcc.gov/public/attachments/FCC-20-111A1.pdf>.

<sup>39</sup> Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC-15-136 at 24, cited in Public Advocates Office, Comments on Order Instituting Rulemaking at 10.

However, as mentioned earlier, in 2017 the Court vacated these rates, and thus the FCC's 2013 rates currently remain in effect.

In its 2014-2015 investigations, the FCC found that one reason inmate calling service rates are high is that inmates (or their family) typically pay additional "ancillary fees" for "services" such as making automated payments by phone or website, for making payments with a "live agent," or for "paper bill fees," which can also be high.<sup>40</sup> The FCC found that these additional fees make up as much as 38 percent of the total customer payments and that the number and varying nomenclature and charges "make for a confusing system."<sup>41</sup>

The Code of Federal Regulation defines these additional fees or "ancillary charges" as "...any charge Consumers may be assessed for the use of Inmate Calling services that are not included in the per-minute charges assessed for individual calls."<sup>42</sup> In 2015, the FCC prohibited all ancillary charges except for the following charges, which it capped:<sup>43</sup>

- a. Automated Payment Fees means credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk, capped at \$3.00 per use;
- b. Fees for Single-Call and Related Services means billing arrangements whereby an inmate's collect calls are billed through a third party on a per-call basis, where the called party does not

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<sup>40</sup> See ARS Technica, "Jails pocket up to 60 percent of what inmates pay for phone calls," Oct. 24, 2017, available as of this writing at <https://arstechnica.com/tech-policy/2017/10/jails-pocket-up-to-60-percent-of-what-inmates-pay-for-phone-calls/>.

<sup>41</sup> FCC 15-136, Second Report and Order and Third Further Notice of Proposed Rulemaking, In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Federal Communications Commission, November 5, 2015, ¶144 at p. 77, cited in Public Advocates Office, Comments on Order Instituting Rulemaking at 14.

<sup>42</sup> 47 CFR § 64.6000(a).

<sup>43</sup> *Ibid*; 47 C.F.R. § 64.6020(b)(1).

- have an account with the provider of inmate calling services or does not want to establish an account, capped at the exact transaction fee charged by the third-party provider, with no markup, plus the adopted, per-minute rate;<sup>44</sup>
- c. Live Agent Fee means a fee associated with the optional use of a live operator to complete inmate calling services transactions, capped at \$5.95 per use;
  - d. Paper Bill/Statement Fees means fees associated with providing customers of inmate calling services an optional paper billing statement, capped at \$2.00 per use; and,
  - e. Third-Party Financial Transaction Fees means the exact fees, with no markup, that providers of inmate calling services are charged by third parties to transfer money or process financial transactions to facilitate a Consumer's ability to make account payments via a third party, capped at the exact fees, with no markup that results from the transaction.

Broadly speaking, there are two broad categories of additional fees charged by intrastate calling service providers - incremental fees related to individual calls and administrative fees related to the customer's account with the calling service provider.<sup>45</sup> Intrastate ancillary charges may include automated payment fees, fees for single-calls and related services, live agent fees, bill statement fees, and third-party financial transaction fees. Service providers may also charge a per-call or per-connection fee; authorized fees, which are government authorized but not mandatory; mandatory taxes and or fees which calling service providers are required to charge by government; and possibly other, as of yet undiscovered, fees.<sup>46</sup> Administrative fees may include fees to

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<sup>44</sup> The cap for single-call services have not yet become effective. Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, FCC, released August 7, 2020, at page 6.

<sup>45</sup> Public Advocates Office, Comments on Order Instituting Rulemaking at 15.

<sup>46</sup> *Id.* at 14, citing CFR § 64.6000(o), (b), and (n).

open an account, monthly fees to maintain an account, fees to add money to an account, fees to take money out of an account, and fees to close an account. The Public Advocates Office states that it is difficult to discern which calling service fees, if any, are mandated by the government.<sup>47</sup>

In comments on the Order Instituting Rulemaking, Global Tel\*Link states that since it is difficult to separate ancillary fees for interstate calls from those for intrastate calls, the FCC's actions have already effectively capped ancillary charges for intrastate calls.<sup>48</sup> In its Fourth Rulemaking, the FCC generally confirms this interpretation and notes that its caps should act as a ceiling on state action to cap ancillary fees where intra- and interstate jurisdiction cannot be disentangled.<sup>49</sup> The FCC proposed in its Fourth Rulemaking to lower interstate rate caps from the 2013 levels to \$0.14 per minute for debit, prepaid, and collect calls from prisons and \$0.16 per minute for debit, prepaid, and collect calls from jails.<sup>50</sup> The FCC indicated that its Fourth Rulemaking proposals "use a

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<sup>47</sup> *Ibid.*

<sup>48</sup> Global Tel\*Link, Opening Comments at 15.

<sup>49</sup> Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No, 12-375 (rel. Aug. 7, 2020), at 2 states, "We find that ancillary service charges generally cannot be practically segregated between the interstate and intrastate jurisdictions except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is a clearly intrastate-only call. As a result, inmate calling services providers are generally prohibited from imposing any ancillary service charges other than those permitted by the Commission's rules and providers are generally prohibited from imposing charges in excess of our applicable ancillary service fee caps." See also *Id.* at 17, "[o]ur rules apply to all ancillary service charges imposed for and in connection with interstate inmate calling services. To the extent those charges relate to accounts or transactions having interstate as well as intrastate components, the federal requirements will operate as ceilings limiting potential state action."

<sup>50</sup> *Ibid.*

methodology that addressed the flaws underlying the [FCC's] 2016 and 2017 rate caps."<sup>51</sup>

This proceeding will undertake discovery on the costs of the provision of inmate communication services, including the rates and ancillary or additional fees charged. Our work in Phase I will include examining the FCC's adopted and proposed rate and fee caps as starting points or models to provide interim relief to ensure access to just and reasonable communication service rates for California inmates and their families in 2021 on an expedited basis.

#### **4. Limits on Site Commission Fees**

In its investigations, the FCC found an additional reason inmate calling service rates are so high is that provider "site commission" fees paid to prisons or jails are included in determining rates.<sup>52</sup> Site commission fees are a percentage of calling service revenues that intrastate calling service providers pay to state and local incarceration facilities.<sup>53</sup> Site commission fees typically are set as a percentage (either variable or fixed) of gross calling service revenues and may constitute a substantial percent of the revenues. Site commission fees lower net

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<sup>51</sup> *Ibid.* With this, the FCC is referring to its 2015 approach based on weighted average per minute costs. *See Id.* at 8. *See also Id.* at 26, which indicates the FCC used the following approach in establishing its 2020 proposed caps: "We establish our proposed rates based on (1) our calculated mean contract costs per paid minute to provide inmate calling services as reported by providers plus one standard deviation; and (2) an allowance for recovery of correctional facility costs directly related to the provision of inmate calling services observed in that data."

<sup>52</sup> *See Global Tel\*Link v. FCC ("GTL")*, 866 F.3d 397, 404 (D.C. Cir. 2017).

<sup>53</sup> 47 CFR 64.6000(t): "Site Commission means any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide Inmate Calling Services, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility."



revenues for calling service providers, which in turn results in higher per-minute rates and higher additional fees to cover the cost of providing service.<sup>54</sup>

Site commission fees are individually negotiated in the contracts between the calling service providers and the incarceration facilities and can vary at the local, county, state and federal levels.<sup>55</sup> The California Penal Code § 4025(d) allows sheriffs to receive site commission fee payments from calling service providers and to use such monies “primarily for the benefit, education, and welfare of the inmates confined within the jail,” although the code also allows use of the funds to augment regular expenses as “determined by the sheriff to be in the best interests of inmates.”<sup>56</sup> Parties to Rulemaking 20-10-002 state that the “vagueness” of the penal code constitutes a “loophole” that has been used to fund an array of costs unrelated to inmate rehabilitative or educational purposes.<sup>57</sup>

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<sup>54</sup> Public Advocates Office, Comments on Order Instituting Rulemaking at 12.

<sup>55</sup> *Ibid.*

<sup>56</sup> Penal Code Section 4025 establishes: “The money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. Inmate welfare funds shall not be used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county expenses as determined by the sheriff to be in the best interests of inmates.”

<sup>57</sup> Media Alliance, Comments on Order Instituting Rulemaking at 14; Root and Rebound, Comments on Order Instituting Rulemaking at 6.

SB 81 banned site commission fees to state prison facilities to reduce inmate calling rates.<sup>58</sup> These limitations appear also to have been misused, however. For instance, the “administrative fee” that Global Tel\*Link agreed to pay to the California Technology Agency for its 2012-2018 contract for inmate calling services to state institutions totaled \$800,000 annually.<sup>59</sup> Service providers also install technology and provide tablet, computers, discounted calling cards and other equipment to institutions to procure contracts, sometimes free of charge.<sup>60</sup> Other potential payments may include campaign contributions or contributions to unions or sheriff’s associations.<sup>61</sup>

At the federal level, the FCC’s 2015 rate caps categorically excluded site commission fees from calculations of the estimated cost of service.<sup>62</sup> On appeal in *Global Tel\*Link v. FCC* (“GTL”), the United States Court of Appeals for the District of Columbia (D.C.) Circuit remanded to the FCC to determine if it could segregate proposed caps on interstate calls from proposed caps on intrastate calls, which the Court ruled the FCC did not demonstrate authority to regulate.<sup>63</sup> The Court struck down the FCC’s categorical exclusion of site commissions in calling service ratemaking and remanded to the FCC to assess “which portions of site commissions might be directly related to the provision of [inmate calling

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<sup>58</sup> SB 81, States 2007 Ch 175, Sec. 32.

<sup>59</sup> California Technology Agency, Agreement Number OTP 11-126805, ¶ 8.

<sup>60</sup> See International Business Times, “Private Tech Firms Securus, GTL Offer Jails Million-Dollar Payments, Tablet Computers For Exclusive Phone Contracts” July 10, 2015, available as of this writing at <https://www.ibtimes.com/private-tech-firms-securus-gtl-offer-jails-million-dollar-payments-tabletcomputers-2003383>.

<sup>61</sup> *Ibid.*

<sup>62</sup> Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, (“FCC Order”), 30 FCC Rcd. 12763, ¶¶ 3 (Nov. 5, 2015).

<sup>63</sup> See GTL, 866 F.3d at 412.

services] and therefore legitimate, and which are not.”<sup>64</sup> As mentioned, the FCC’s Fourth Rulemaking proposes new interstate rate caps of \$0.14 per minute for debit, prepaid, and collect calls from prisons and \$0.16 per minute for debit, prepaid, and collect calls from jails.<sup>65</sup> These FCC proposed rates include \$0.02 per minute to account for the costs correctional facilities incur that are “directly related to the provision of inmate calling services and that represent a legitimate cost for which providers of inmate calling services may have to compensate facilities,” including site commission fees.<sup>66</sup> The Fourth Rulemaking also proposes a waiver process whereby service providers may seek waivers on a facility-by-facility or contract basis if the FCC’s proposed rate caps prevent the provider from recovering the costs at a given facility or group of facilities.<sup>67</sup>

At the state level, however, some five states have prohibited or restricted site commission fees.<sup>68</sup> Amongst these, the Public Utilities Commission of Ohio eliminated site commission fees and reduced intrastate calling rates to \$0.05 per minute. The New Jersey Board of Public Utilities similarly recently awarded a

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<sup>64</sup> *Id.* at 414.

<sup>65</sup> Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No, 12-375 (rel. Aug. 7, 2020), at 2.

<sup>66</sup> *Id.* at 36. See also *Id.* at 37, “...we propose to include an allowance for site commission payments in the interstate rate caps to the extent those payments represent legitimate correctional facility costs that are directly related to the provision of inmate calling services. The \$0.02 per minute that we propose reflects our analysis of the costs correctional facilities incur that are directly related to providing inmate calling services.”

<sup>67</sup> *Id.* at 39.

<sup>68</sup> Public Advocates Office, Comments on Order Instituting Rulemaking at 11: Ohio, West Virginia, New Jersey, Pennsylvania and New Hampshire.

state prisons contract that eliminated site commission fees and reduced rates below \$0.05 per minute.<sup>69</sup>

In this proceeding, we will undertake discovery regarding site commission fees provided to incarceration or detention facilities in California by inmate communication service providers. This will include investigation of site commission fees as well as technology grants, signing bonuses or other types of monetary or in-kind payments, gifts, exchange of services or goods, fees, technology allowance or products that inmate communication service providers may provide. Additionally, we will review state and other governmental actions to ban or limit inmate communication service site commission fees as part of our work to ensure access to just and reasonable rates for California inmates and their families.

## **5. Inmates with Communications Disabilities**

Inmates with communication disabilities, or who communicate with people with communication disabilities, face special challenges due to a lack of availability of appropriate forms of accessible communications services at reasonable rates.<sup>70</sup> Parties state that communication services for those with communication disabilities is transitioning away from the traditional text telephones and telecommunication devices for the deaf (TTY/TDD) to more use of secure messaging (text/email), video visitation (which allows use of sign language), and advanced forms of telecommunications relay services, video relay services and internet provider services.<sup>71</sup>

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<sup>69</sup> *Id.* at 11.

<sup>70</sup> Center for Accessible Technologies, Comments on Order Instituting Rulemaking at 5.

<sup>71</sup> Public Advocates Office, Comments on Order Instituting Rulemaking at 19.

In 2015, the FCC capped per-minute rates for TTY-to-TTY calls at 25 percent of the rates service providers charge for traditional inmate calling services.<sup>72</sup> The FCC also prohibits service providers from collecting any charges or fees for TTY-to-voice or voice-to-TTY calls.<sup>73</sup> Global Tel\*Link states that through its contract with the California Department of Corrections and Rehabilitation, it currently provides all assistive forms of communication – TTY, TDD, video relay, and sign-language video calls -- without users incurring any charges. Global Tel\*Link also states that it provides TTY and telecommunications relay service calls through a third-party provider.<sup>74</sup>

Root and Rebound observes that although the FCC recently changed its requirements such that digital networks must now be compatible with TTYs, a range of compatibility, accessibility and compliance challenges remain.<sup>75</sup> Further, a 2015 study found that seven percent of inmates need accommodation for hearing disabilities.<sup>76</sup> TURN recommends that the Commission study what communications technologies are currently or will soon become available and what technologies are currently provided and/or could be required. The Center for Accessible Technologies emphasizes the importance of ensuring all forms of accessible technologies are available and affordable to inmates with hearing

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<sup>72</sup> Public Advocates Office, Comments on Order Instituting Rulemaking at 17, citing 6 Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC-15-136 at p. 118.

<sup>73</sup> *Ibid.*

<sup>74</sup> Global Tel\*Link, Comments on Order Instituting Rulemaking at 17.

<sup>75</sup> Root and Rebound, Comments on Order Instituting Rulemaking at 11. Root and Rebound summarizes a 2019 federal court ruling requiring the Colorado Department of Corrections to make videophone available to all incarcerated people who are deaf or hard of hearing, or whose family members have these conditions, because the barriers posed by TTY violate the Americans with Disabilities Act.

<sup>76</sup> *Ibid.*

disabilities and inmates with family members or support network members with hearing disabilities.<sup>77</sup>

This proceeding will investigate rates and technologies provided to inmates with communications disabilities and their families. We will consider currently offered technologies and the potential evolution of services as part of ensuring access to just and reasonable, and affordable, communications services for incarcerated individuals with communications disabilities.

## **6. Phase I**

Below sets forth the preliminary definition of “inmate communication services,” which we will refine as needed over the course of this proceeding. In Phase I of this proceeding, we will use this definition and discovery data to determine, at a high level, if competition within the inmate communication services market is not currently ensuring access to communications services for inmates and their families at just and reasonable rates. The schedule provides for expedited action to adopt interim relief for inmates and their families by mid-2021. Swift action to provide interim relief to inmates and their families was supported by all intervenors to this proceeding in comments on the Order Instituting Rulemaking and during the prehearing conference. This is in part due to the critical importance of supporting continued family contact during the COVID-19 pandemic, which has hit incarceration and detention facilities particularly hard.<sup>78</sup>

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<sup>77</sup> Center for Accessible Technologies, Comments on Order Instituting Rulemaking at 5.

<sup>78</sup> “Tracking the coronavirus in California state prisons,” LA Times, accessed January 4, 2020 at: <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/state-prisons/>.

Parties undertaking discovery activities in Phase I should refer to Article 10 and Rules 11.3 and 11.7 of the Commission's Rules of Practice and Procedure (Rules) for guidance. Additionally, parties may wish to refer to the following resources: 1) "General Discovery Custom and Practice;"<sup>79</sup> 2) D.06-06-066, "Interim Opinion Implementing Senate Bill No. 1448, Relating to Confidentiality of Electric Procurement Data Submitted to the Commission," and appendices; and 3), D.08-04-023, "Decision Adopting Model Protective Order and Non-Disclosure Agreement, Resolving Petition for Modification and Ratifying Administrative Law Judge Ruling."

### **6.1. Defining "Inmate Calling Services"**

The Order Instituting Rulemaking used the term "incarcerated minors and people in California" to set forth our broad intent for this proceeding.<sup>80</sup> In comments on the Order Instituting Rulemaking, a number of parties recommend that we broadly define what we now call "inmate communication services."<sup>81</sup> Several parties recommend that we include minors and adults held in state and federal immigration detention centers in California within the scope of this definition, in addition to minors and adults held in federal, state, county or city jails, prisons and other types of detention or correction facilities.<sup>82</sup> The Center for Accessible Technology suggests we include within this definition inmates held in

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<sup>79</sup> Available on the Commission's website here:  
[https://www.cpuc.ca.gov/custom\\_and\\_practice/](https://www.cpuc.ca.gov/custom_and_practice/).

<sup>80</sup> Order Instituting Rulemaking at 6.

<sup>81</sup> Center for Accessible Technology, The Utility Reform Network, Public Advocates Office, Prison Policy Institute, Media Alliance.

<sup>82</sup> Center for Accessible Technology, Comments on Order Instituting Rulemaking at 3 and 6; The Utility Reform Network, Comments on Order Instituting Rulemaking at 10; Public Advocates Office, Comments on Order Instituting Rulemaking at 3.



military prisons and tribal jails in California.<sup>83</sup> The Utility Reform Network proposes the Commission also include psychiatric hospitals within this definition.<sup>84</sup> The Public Advocates Office urges us to address both privately and government owned and/or operated corrective facilities and detention centers.<sup>85</sup>

For purposes of this proceeding, we preliminarily define “inmate communication services” as including any and all communication services provided by telephone corporations to incarcerated or detained minors or adults held in California, including (but not limited) to in the following types of facilities:

- Federal prisons, correction facilities, psychiatric hospitals and immigrant detention facilities;
- State prisons, correctional facilities, psychiatric hospitals, juvenile detention facilities, and camps;
- City and county jails, correctional facilities, juvenile detention facilities, holding centers, and camps; and
- Military jails and tribal jails.<sup>86</sup>

As discussed in the Order Instituting Rulemaking, Pub. Util. Code § 234(a) defines “telephone corporations” as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.” Pub. Util. Code § 233, in turn, defines “a telephone line” to include “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or

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<sup>83</sup> Center for Accessible Technology, Comments on Order Instituting Rulemaking at 3 and 6.

<sup>84</sup> The Utility Reform Network, Comments on Order Instituting Rulemaking at 6 and 11.

<sup>85</sup> Public Advocates Office, Comments on Order Instituting Rulemaking at 2.

<sup>86</sup> There may be special considerations regarding tribal jails located in California Indian Country. We are investigating these issues with Kenneth C. Holbrook, Tribal Advisor to the Commission.

managed in connection with or to facilitate communication by telephone, *whether such communication is had with or without the use of transmission wires.*"<sup>87</sup> Thus, regarding the types of technologies for which the Commission's Communication Division seeks rate, fee and related information, we include all communication services under the Commission's jurisdiction, including (but not limited to) voice calling, Voice Over Internet Protocol calling, video calling, texting, and all additional communications services serving people with disabilities.

As needed, we will refine our definition of inmate communication services over the course of the proceeding as we gain more information.

## **7. Issues**

The overall purpose of this proceeding is to determine if the Commission should exercise its authority to regulate the rates, terms, and conditions of intrastate inmate communication services, including (but not limited to) voice, Voice Over Internet Protocol, video calling services, and text services provided to incarcerated and detained people in California to ensure they are just, reasonable, and affordable.

After considering the comments are reply comments and discussion at the prehearing conference, we have determined the issues and initial schedule of the proceeding as follows:

### Phase I:

1. How should the Commission define inmate communication services?
2. Should the Commission examine the conditions of inmate communication services market competition and seek

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<sup>87</sup> Pub. Util. Code § 233, emphasis added.

verifiable evidence of the true costs of service providers of inmate communication services?

3. Should the Commission provide immediate interim relief to meet the inmate communication service needs of incarcerated people and their families at just and reasonable rates, including those with communication disabilities? If so, how?
4. Should FCC regulations over interstate and international calls inform the Commission's approach to intrastate inmate communication services? If so, how? Should the Commission use some elements of FCC orders but not others as models for ensuring just and reasonable, and affordable, inmate communication services rates in California?

Phase II:

5. Beyond providing interim relief, should the Commission set rate caps for intrastate inmate communication services to ensure rates that are just and reasonable, and affordable? What factors should the Commission consider when ensuring access to inmate communication services at just, reasonable, and affordable rates? Amongst other factors, the Commission may consider:
  - a. Limits on the types of "ancillary" fees providers can charge for intrastate inmate communication services, including single-call service (and related service) fees, automated payment fees, third-party transaction financial transaction fees; live agent fees, bill statement fees, paper bill fees, amongst other types of fees;
  - b. Limits on additional fees including per-call or per-connection fees, government-authorized but not mandatory fees, transaction fees or surcharges, "first-minute" rates or fees;
  - c. Limits on site commissions, technology grants, signing bonuses or other types of monetary or in-kind payments, gifts, exchange of services or goods, fees, technology allowance or products that inmate communication service providers or their affiliates may pay, give, donate, or otherwise provide to an entity that operates a correctional

- or detention facility, to an entity with whom a service provider enters into an agreement to provide inmate communication services, to a government agency that oversees the correctional or detention facility, to the city, county or state where a facility is located, or to an agent of any such facility;
- d. Limits on the inclusion in rates of the costs of security or surveillance in inmate communication services rates;
  - e. The potential role of competition in increasing access to inmate communication services;
  - f. Distinguishing between inmate communication services provided for juveniles and for adults;
  - g. The expected evolution of technologies for inmate communication services, particularly for people with communications disabilities;
  - h. The location and size of the inmate population where the inmate communication services are provided; and
  - i. Other issues as they arise.
6. Beyond providing interim relief, should the Commission act to ensure that all forms of accessible intrastate inmate communication services, including services for incarcerated people who communicate with non-incarcerated people who have communication disabilities, are available for use and are provided at rates that are just, reasonable, and affordable to people who are incarcerated and/or their families?
- a. As part of this, should the Commission gather information on third-party providers of accessible forms of communication services and consider methods to ensure such services are provided at just, reasonable, and affordable, rates?
7. Beyond providing interim relief, should the Commission seek to identify and correct unacceptable conditions regarding inmate communication services:
- a. Service quality;

- b. Bundling of inmate communication services, including bundling with non-communication services such as surveillance and security services;
- c. Data protection and consumer privacy;
- d. Lack of transparency and general consumer disclosures and protections;
- e. Payment structures;
- f. The holding of extended contracts by service providers without regular procurement renewals;
- g. Restrictions on access to inmate communication services; and/or
- h. Restrictions on in-person visits by inmates using inmate communication services, among other factors?

When considering these issues, the Commission may consider, among other factors:

- i. Distinguishing between inmate communication services provided for juveniles and for adults;
  - ii. If General Order 133-D regarding communications service quality standards and reporting requirements should be applied to inmate communication services, if so, which elements;
  - iii. How compliance with any adopted requirements should be measured; and
  - iv. Should there be any consequences for failure to comply with any adopted requirements.
8. Should the Commission seek information and data regarding federal, state or local agency inmate communication services contracting practices? If so, how?
9. Should the Commission establish a regular inmate communication service provider data collection or audit process, and/or a citation mechanism to ensure compliance with this rulemaking and to maintain transparency? If so, what types of approaches or mechanisms should be established?

**8. Need for Evidentiary Hearing**

This Commission preliminarily determined in the Order Instituting Rulemaking that this proceeding may involve contested issues of material fact and evidentiary hearings may be necessary. This Scoping Memo does not change this determination. Evidentiary hearings may be needed, and the Phase II schedule provides for this.

**9. Oral Argument**

Unless comment is waived pursuant to Rule 14.6.(c)(2) for granting the uncontested relief requested, motion for oral argument during Phase I and Phase II shall be by no later than the time for filing comment on the proposed decision in each respective phase.

**10. Schedule**

The following schedule is adopted here and may be modified by the Administrative Law Judge as required to promote the efficient and fair resolution of this Rulemaking:

EVENT	DATE
<b>Phase I – Interim Relief</b>	
Commission and party discovery	January - March 2021
Ruling setting public participation hearing dates and directing inmate communication service providers to notice customers	February 2021
Administrative Law Judge ruling issuing proposal for Interim Relief and questions for party comment	February 2021
Public participation hearings	March – April 2021
Party comments/briefs on ruling questions	March 2021
Party reply comments/briefs on ruling questions	March 2021
Phase I Proposed Decision on Interim Relief issued	Q2 2021
<b>Phase II</b>	
Prehearing conference or All-Party Meeting to discuss Phase II schedule	Q3 2021
Additional workshops to discuss additional proposals (followed by workshop report, allowing party comment)	Summer 2021
Administrative Law Judge ruling issuing additional questions for party comment	Fall 2021
Party testimony on ruling questions	Fall 2021
Party reply testimony on ruling questions	Winter 2021
Deadline to submit motion for evidentiary hearings	Winter 2021
Evidentiary hearings	Winter 2021
Opening briefs	Early 2022
Reply briefs	Early 2022
Proposed Decision issued	Q1 2022

The organization of party comments and briefs must correspond to the organization of the Administrative Law Judge’s ruling questions.

The proceeding will stand submitted upon the filing of reply briefs in Phase II, unless the Administrative Law Judge requires further evidence or



argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Pub. Util. Code § 1701.5.

**11. Alternative Dispute Resolution Program and Settlements**

The Commission's Alternative Dispute Resolution program offers mediation, early neutral evaluation, and facilitation services, and uses Administrative Law Judges who have been trained as neutrals. At the parties' request, the assigned Administrative Law Judge can refer this proceeding to the Commission's Alternative Dispute Resolution Coordinator. Additional Alternative Dispute Resolution information is available on the Commission's website.<sup>88</sup>

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

**12. *Ex Parte* Restrictions**

This ruling confirms the Commission's preliminary determination in the Order Instituting Rulemaking that this is a ratesetting proceeding. Accordingly, *ex-parte* communications are restricted and must be reported pursuant to Article 8 of the Rules.

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<sup>88</sup> See D.07-05-062, Appendix A, § IV.O.

### **13. Public Outreach**

Pursuant to Pub. Util. Code § 1711.(a), we hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's November 2020 monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website. Subsequent to adoption of the Order Instituting Rulemaking, we received a letter from the California State Sheriff's Association.

In addition, the Commission served the Order Instituting Rulemaking on the following organizations and government entities:

- California State Association of Counties
- California Department of Corrections
- #Cut50
- Access Support Network
- ACLU NorCal
- Ameelio
- Anti-Recidivism Coalition
- APLA Health
- California Catholic Conference
- California Coalition for Women Prisoners
- California Immigrant Policy Center
- California Low-Income Consumer Coalition
- California Public Defenders Association
- Center on Juvenile and Criminal Justice
- Children's Defense Fund
- Community Housing Partnership
- Drug Policy Alliance

- Ella Baker Center for Human Rights
- Essie Justice Group
- Financial Justice Project
- Freedom for Immigrants
- Friends Committee on Legislation of California
- Initiate Justice
- Lawyers' Committee for Civil Rights of the San Francisco Bay Area
- Legal Services for Prisoners with Children
- Media Alliance
- MILPA
- Monterey Peace and Justice Center
- Pangea Legal Services
- Prison Phone Justice
- Prison Works Focus
- Prisoners with Children
- Public Policy Research & Consulting
- Returning Home Foundation
- San Francisco Financial Justice Project
- San Francisco Public Defender
- TGI Justice Project
- The Center for Accessible Technology
- The Greenlining Institute
- The Utility Reform Network
- TransLatin@ Coalition
- Urban Peace Institute
- Western Center on Law and Poverty

- Women's Policy Institute (WPI)
- Worth Rises
- Young Community Developers
- Young Women's Freedom Center
- Youth Law Center

#### **14. Intervenor Compensation**

Pursuant to Pub. Util. Code § 1804.(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by 30 days after the prehearing conference.

#### **15. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for the proceeding.

#### **16. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

#### **17. Filing, Service, and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the

service list, and the Administrative Law Judge. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10. requires service on the Administrative Law Judge of both an electronic and a paper copy of filed or served documents. Rule 1.10. requires only electronic service on any person on the official service list, other than the Administrative Law Judge.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9.(f).

#### **18. Service of Documents on Commissioners and Their Personal Advisors**

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, *parties must only provide electronic service*. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

#### **19. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Cathleen A. Fogel is the assigned Administrative Law Judge and Presiding Officer for the proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is set forth above.
3. Evidentiary hearing may be needed.
4. The presiding officer is Administrative Law Judge Cathleen A. Fogel.
5. The category of the proceeding is ratesetting.

This order is effective today.

Dated January 12, 2021, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves  
Assigned Commissioner